

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, November 17, 1999 - 2:00 p.m. - Room 403 State Capitol

Members Present:

Sen. Terry Spencer, Senate Chair
Rep. A. Lamont Tyler, House Chair
Sen. Lyle W. Hillyard
Sen. David H. Steele
Sen. Pete Suazo
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Afton B. Bradshaw
Rep. Katherine M. Bryson
Rep. Gary F. Cox
Rep. Greg J. Curtis
Rep. Neal B. Hendrickson
Rep. J. W. "Bill" Hickman
Rep. LaWanna "Lou" Shurtliff
Rep. John E. Swallow
Rep. David Ure

Members Absent:

Rep. Martin R. Stephens
Rep. Glenn L. Way

Members Excused:

Rep. David L. Gladwell

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Ms. Esther Chelsea-McCarty,
Associate General Counsel
Ms. Glenda S. Whitney,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order and Committee Business - Chair Tyler called the meeting to order at 2:17 p.m.

MOTION: Sen. Steele moved to approve the minutes of the October 20, 1999 meeting. The motion passed unanimously, with Sen. Spencer, Sen. Hillyard, Rep. Arent, Rep. Bradshaw, Rep. Curtis, Rep. Hickman, and Rep. Ure absent for the vote.

2. Weapons Restrictions Amendments - Chair Tyler reminded the committee that this legislation was recently endorsed by the committee. It is before the committee again to address concerns raised by the Statewide Association of Prosecutors.

Sen. Spencer distributed a handout, "Offenses Removed from List of Violent Misdemeanors," that he reviewed. He indicated that the offenses removed will not change the intent of the bill.

Chair Tyler took public comment.

Mr. Scott Engen, Gun Owners of Utah, distributed a handout, "Public Policy Position Paper - 17 November 1999," that expressed concern about the potential loss of critical, individual constitutional rights based on misdemeanor convictions. He said that under no circumstances

should a misdemeanor conviction be used as the basis for the loss of any civil rights, either temporary or permanent, including the right to own, purchase, possess or use a firearm for any lawful purpose.

Ms. Ruth H. Andrus, Eagle Forum, expressed concern with the legislation, explaining that it violates the Utah Constitution.

MOTION: Rep. Cox moved to adopt "Weapons Restrictions Amendments" with the proposed offenses removed from the list of violent misdemeanors, as a committee bill. The motion passed, with Rep. Bennion voting in opposition and Rep. Ure absent for the vote.

3. Standards for Illegal Drug Lab Decontamination - Chair Tyler noted that draft legislation was distributed in the packet for the committee to review. He reported on the legislation and asked Rep. Bryson to chair the discussion.

Captain Kevin Youngberg, Co-Chair, Utah Substance Abuse and Anti-Violence Coordinating Council (USAACV), distributed a handout, "Report to the Legislature on Illegal Drug Lab Decontamination: Public Safety Standards and Programs," which he reviewed. He referred to H.J.R. 11 that was passed in the 1999 General Session, directing the USAACV to oversee a work group on methamphetamine lab cleanup issues.

Captain Youngberg reported on the USAACV work group and presented its recommendations from the handout. He discussed the following issues: 1) standards for the procedures to be used in cleanup of methamphetamine lab sites and standards for habitability of those sites, and which agency is responsible for enforcement of the standards; 2) certification programs for businesses and which agency shall be responsible for certifying businesses; 3) training programs for public health and safety employees and which agency shall be responsible for conducting the training; and 4) sources to provide funding for methamphetamine lab cleanup costs.

Rep. Tyler referred to draft legislation, "Standards for Illegal Drug Lab Decontamination," and presented an overview. He said this legislation was patterned after the Washington State model. The legislation creates the illegal drug manufacturing and storage site decontamination act which provides for the Department of Health and the Department of Environmental Quality to jointly oversee the identification and cleanup of controlled substances manufacturing sites. It also provides rule-making authority, sets rules and standards, and addresses the illegal drug manufacturing and storage site decontamination funding.

After committee discussion, Chair Bryson took public comment.

Ms. Carmen Sanome, Salt Lake County Aging Services, spoke in support of the proposed legislation.

MOTION: Rep. Hickman moved to continue on to the next agenda item.

SUBSTITUTE MOTION: Rep. Tyler moved to approve the concept of the bill with the understanding that examples of rules will be provided before a final vote during the Legislative General Session. After committee discussion, Rep. Tyler withdrew the substitute motion.

The committee returned to Rep. Hickman's original motion. The motion passed, with Sen. Suazo, Rep. Hendrickson, and Rep. Shurtliff voting in opposition, and with Sen. Spencer, Sen. Steele, and Rep. Swallow absent for the vote.

Rep. Bryson returned the Chair to Rep. Tyler.

4. Judicial Selection, Retention, Discipline and Removal - Mr. Jerry D. Howe, Research Analyst, distributed a packet, "Judicial Accountability and Independence," and presented a slide presentation. He explained in detail the current processes for the selection, retention, discipline, and removal of judges. He illustrated the relationship between judicial independence and judicial accountability prior to and after the 1985 Judicial Article rewrite. He discussed Rep. Bryson's proposal on judicial retention elections and reviewed the conclusions of the Constitutional Revision Commission (CRC) with respect to judicial selection and retention.

Chair Tyler indicated that a bill has not been drafted, and suggested that the committee make recommendations for proposed legislation or recommend this issue for study during the 2000 interim.

Rep. Ure said that there seems to be legitimate concerns regarding judicial accountability. He expressed the idea that had the legislature not given away its power of address, these problems could be easily solved.

Rep. Cox acknowledged that the Judicial Conduct Commission (JCC) has struggled with issues of judicial misconduct. He suggested that the JCC should have authority to share information of criminal misconduct with a prosecutor rather than keeping the information confidential.

Rep. Bryson said judicial retention elections are different from any other elections because there is no opponent. Without an opponent, there exists a substantial presumption in favor of retaining the judge. That presumption is important to judicial independence, but in Utah we have gone too far she said, because in addition to not having an opponent, we have also been reluctant to provide any meaningful information to voters regarding the judges' record of misconduct. Not

only do judges have no opponent, but also if the judge has received a reprimand, that information is kept from the voters. The consequence is that there is very little, if any, judicial accountability in this state. She said that voters in her district have had enough judicial elitism, and it is time for the legislature to address the issue.

Rep. Arent said the committee needed more time to study this issue.

MOTION: Rep. Ure moved to continue with the next agenda item. The motion passed unanimously, with Rep. Curtis and Rep. Swallow absent for the vote.

5. Identification Number Fraud - Rep. Bennion referred to draft legislation in the packet, "Identification Number Fraud." He presented an overview on the legislation and noted that it creates the crime of identification number fraud and provides a penalty.

MOTION: Rep. Bennion moved to adopt "Identification Number Fraud" as a committee bill. The motion passed unanimously, with Rep. Arent, Rep. Bryson, Rep. Curtis, Rep. Hendrickson, Rep. Hickman, Rep. Swallow, and Rep. Ure absent for the vote.

6. Uniform Child Custody Jurisdiction and Enforcement Act - Sen. Hillyard briefed the committee on the draft proposal and noted that he will introduce the bill at the 2000 General Session.

Mr. Stewart Ralphs, Executive Director, Legal Aid Society of Salt Lake, spoke in support of the bill.

Mr. Richard Schwermer, Administrative Office of the Courts, said if some time line issues and terminology changes are resolved, then the Judicial Council is supportive of the bill and applauds the effort to provide uniform rules.

7. Cohabitant Abuse Act Amendments - This item was not discussed.

8. Reports and Items / Adjourn -

Chair Tyler noted that the four Judiciary Interim Committee bills that will be introduced in the 2000 General Session are:

- Weapons Restrictions Amendments - to be sponsored by Sen. Spencer
- Weapons Restrictions for Mentally Ill Persons - to be sponsored by Rep. Cox
- Background Checks for Weapons Purchase - to be sponsored by Rep. Tyler
- Identification Number Fraud - to be sponsored by Rep. Bennion

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MOTION: Rep. Cox moved to adjourn the meeting at 4:40 p.m. The motion passed unanimously, with Rep. Bryson, Rep. Curtis, Rep. Hickman, and Rep. Swallow absent for the vote.